
SUBSTITUTE SENATE BILL 5034

State of Washington

60th Legislature

2007 Regular Session

By Senate Committee on Water, Energy & Telecommunications (originally sponsored by Senators Regala, Eide, Swecker, Weinstein, Franklin, Rasmussen, Brandland, Spanel, Jacobsen, McAuliffe, Poulsen, Keiser, Shin, Pridemore, Fraser, Fairley, Rockefeller, Kline, Kohl-Welles, Tom, Murray and Oemig; by request of Department of Ecology)

READ FIRST TIME 01/22/07.

1 AN ACT Relating to phasing out the use of polybrominated diphenyl
2 ethers; adding a new chapter to Title 70 RCW; and prescribing
3 penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** Polybrominated diphenyl ethers (PBDEs) have
6 been used extensively as flame retardants in a large number of common
7 household products for the past thirty years. Studies on animals show
8 that PBDEs can impact the developing brain, affecting behavior and
9 learning after birth and into adulthood, making exposure to fetuses and
10 children a particular concern. Levels of PBDEs are increasing in
11 people, and in the environment, particularly in North America. Because
12 people can be exposed to these chemicals through house dust and indoor
13 air as well as through food, it is important to phase out their use in
14 common household products, provided that effective flame retardants
15 that are safer and technically feasible are available at a reasonable
16 cost.

17 NEW SECTION. **Sec. 2.** The definitions in this section apply
18 throughout this chapter unless the context clearly requires otherwise.

- 1 (1) "Comestible" means edible.
- 2 (2) "Commercial decabromo diphenyl ether" or "commercial deca-bde"
3 means the chemical mixture of decabromo diphenyl ether, including
4 associated polybrominated diphenyl ether impurities not intentionally
5 added.
- 6 (3) "Department" means the department of ecology.
- 7 (4) "Electronic enclosure" means the plastic housing that encloses
8 the components of electronic products, including but not limited to
9 televisions and computers.
- 10 (5) "Manufacturer" means any person, firm, association,
11 partnership, corporation, governmental entity, organization, or joint
12 venture that produces a product containing polybrominated diphenyl
13 ethers or an importer or domestic distributor of a noncomestible
14 product containing polybrominated diphenyl ethers. A manufacturer does
15 not include a retailer who:
- 16 (a) Adds a private label brand or cobrands a product for sale; or
17 (b) Assembles components to create a single noncomestible product
18 based on an individual consumer preference.
- 19 (6) "Mattress" has the same meaning as defined by the United States
20 consumer product safety commission in 16 C.F.R. Part 1633 (2007) and
21 includes mattress pads, mattress sets, box springs, futons, crib
22 mattresses, and youth mattresses.
- 23 (7) "Medical device" means an instrument, machine, implant, or
24 diagnostic test used to help diagnose a disease or other condition or
25 to cure, treat, or prevent disease.
- 26 (8) "Polybrominated diphenyl ethers" or "PBDEs" means chemical
27 forms that consist of diphenyl ethers bound with bromine atoms.
28 Polybrominated diphenyl ethers include, but are not limited to, the
29 three primary forms of the commercial mixtures known as pentabromo
30 diphenyl ether (penta-bde), octabromo diphenyl ether (octa-bde), and
31 decabromo diphenyl ether (deca-bde).
- 32 (9) "Residential upholstered furniture" means residential seating
33 products intended for indoor use in a home or other dwelling intended
34 for residential occupancy that consists in whole or in part of
35 resilient cushioning materials enclosed within a covering consisting of
36 fabric or related materials, if the resilient cushioning materials are
37 sold with the item of upholstered furniture and the upholstered

1 furniture is constructed with a contiguous upholstered seat and back
2 that may include arms.

3 (10) "Retailer" means a person who offers a product for sale at
4 retail through any means including, but not limited to, remote
5 offerings such as sales outlets, catalogs, or the internet, but does
6 not include a sale that is a wholesale transaction with a distributor
7 or a retailer. A retailer does not include a person, firm,
8 association, partnership, corporation, governmental entity,
9 organization, or joint venture that both manufactures and sells a
10 product at retail.

11 (11) "Technically feasible" means an alternative that is available
12 at a cost and in sufficient quantity to permit the manufacturer to
13 produce an economically viable product.

14 (12) "Transportation vehicle" means a mechanized vehicle that is
15 used to transport goods or people including, but not limited to,
16 airplanes, automobiles, motorcycles, trucks, buses, trains, boats,
17 ships, streetcars, or monorail cars.

18 NEW SECTION. **Sec. 3.** This chapter does not apply to any of the
19 following:

20 (1) Products containing deca-bde except as provided in sections
21 4(2) and 5 of this act;

22 (2) The sale or distribution of any used transportation vehicle
23 manufactured before January 1, 2008, with component parts containing
24 PBDEs;

25 (3) The sale or distribution of any used transportation vehicle
26 parts or new transportation vehicle parts manufactured before January
27 1, 2008, that contain PBDEs;

28 (4) The manufacture, sale, repair, distribution, maintenance,
29 refurbishment, or modification of equipment containing PBDEs and used
30 primarily for military or federally funded space program applications.
31 The exemption in this subsection (4) does not cover consumer-based
32 goods with broad applicability;

33 (5) Federal aviation administration fire worthiness requirements
34 and recommendations;

35 (6) The manufacture, sale, repair, distribution, maintenance,
36 refurbishment, or modification of any new raw material or component

1 part used in a transportation vehicle with component parts, including
2 original spare parts, containing deca-bde;

3 (7) The use of commercial deca-bde in the maintenance,
4 refurbishment, or modification of transportation equipment;

5 (8) The sale or distribution of any product containing PBDEs that
6 has been previously owned, purchased, or sold in commerce, provided it
7 was manufactured before the effective date of the ban;

8 (9) The sale or purchase of any previously owned product containing
9 PBDEs made in casual or isolated sales as defined in RCW 82.04.040 and
10 to sales by nonprofit organizations;

11 (10) The manufacture, sale, or distribution of any new product or
12 product component consisting of recycled or used materials containing
13 deca-bde;

14 (11) The manufacture, sale, or distribution of new carpet cushion
15 made from recycled foam containing less than one-tenth of one percent
16 penta-bde; and

17 (12) Medical devices.

18 NEW SECTION. **Sec. 4.** (1) Except as provided in sections 3 and 12
19 of this act, after January 1, 2008, no person may manufacture,
20 knowingly sell, offer for sale, distribute for sale, or distribute for
21 use in this state noncombustible products containing PDBEs.

22 (2) Except as provided in sections 3 and 12 of this act, after
23 January 1, 2008, no person may manufacture, knowingly sell, offer for
24 sale, distribute for sale, or distribute for use in this state,
25 mattresses containing deca-bde.

26 NEW SECTION. **Sec. 5.** Except as provided in sections 3, 7, and 12
27 of this act, after January 1, 2011, no person may manufacture,
28 knowingly sell, offer for sale, distribute for sale, or distribute, for
29 use in this state, residential upholstered furniture that contains
30 commercial deca-bde or any television or computer that has an
31 electronic enclosure that contains commercial deca-bde.

32 NEW SECTION. **Sec. 6.** (1) No ban on deca-bde in televisions,
33 computers, or upholstered furniture may go into effect until the
34 department, the department of health, and the fire safety committee

1 determine that a safer and technically feasible alternative that meets
2 applicable fire safety standards is available.

3 (2) By December 15, 2008, the department and the department of
4 health shall review risk assessments, scientific studies, and other
5 relevant findings regarding alternatives to the use of commercial deca-
6 bde in residential upholstered furniture, televisions, and computers.

7 (3)(a) If the department and the department of health jointly find
8 that safer and technically feasible alternatives are available for any
9 of these uses, the department shall convene a fire safety committee to
10 determine if the identified alternatives meet applicable fire safety
11 standards.

12 (b) A representative from the department shall chair the fire
13 safety committee and serve as an ex officio nonvoting member.

14 (c) A majority vote of the fire safety committee members
15 constitutes a finding that an alternative meets applicable fire safety
16 standards.

17 (d) The fire safety committee consists of five voting members,
18 appointed by the governor, from each of the following five firefighting
19 organizations:

20 (i) The office of the state fire marshal;

21 (ii) The Washington fire chiefs;

22 (iii) The Washington fire commissioners association;

23 (iv) The Washington state council of firefighters; and

24 (v) The Washington state firefighters association.

25 (4) If the fire safety committee determines that an alternative
26 identified under subsection (3)(a) of this section meets applicable
27 fire safety standards, the effective date of the ban is the date
28 established in section 5 of this act.

29 (5) If the fire safety committee determines that no alternative
30 identified under subsection (3)(a) of this section meets applicable
31 fire safety standards, the ban established in section 5 of this act
32 does not take effect and the department shall proceed as required in
33 section 7 of this act.

34 (6) The department and the department of health shall document
35 their findings and the findings of the fire safety committee in a
36 report to the legislature by December 15, 2008. The report must also
37 include any additional evidence of the potential harm posed by deca-
38 bde.

1 NEW SECTION. **Sec. 7.** (1) If the department and the department of
2 health jointly find, by December 15, 2008, that an effective flame
3 retardant that is safer than commercial deca-bde and technically
4 feasible for use in residential upholstered furniture, televisions, or
5 computers is not available or if the fire safety committee finds that
6 an alternative to commercial deca-bde does not meet applicable fire
7 safety standards, the department shall by rule grant an exemption to
8 allow for the manufacture, sale, or distribution of products prohibited
9 from manufacture, sale, or distribution under section 5 of this act.

10 (2) If the department grants an exemption under subsection (1) of
11 this section, the department and the department of health shall
12 evaluate the exemption annually. When an effective flame retardant
13 that is safer and technically feasible becomes available, the
14 department shall convene the fire safety committee to determine if the
15 identified alternative meets applicable fire safety standards. If the
16 fire safety committee makes such a finding, the agencies shall report
17 these findings to the legislature by December 15th of the year in which
18 the finding is made. The department shall subsequently rescind the
19 exemption granted under subsection (1) of this section no earlier than
20 two years after this report is submitted to the legislature.

21 NEW SECTION. **Sec. 8.** The department and the department of health
22 shall review risk assessments, scientific studies, and other relevant
23 findings regarding alternatives to the use of commercial deca-bde in
24 products not directly addressed in this chapter. If a flame retardant
25 that is safer and technically feasible becomes available, the
26 department shall convene the fire safety committee to determine if the
27 identified alternative meets applicable fire safety standards. A
28 report on findings of these assessments must be presented to the
29 appropriate committees of the legislature by December 15th of the year
30 in which the finding is made.

31 NEW SECTION. **Sec. 9.** Nothing in this chapter restricts the
32 ability of a manufacturer, importer, or distributor from transporting
33 products containing PBDEs through the state, or storing the products in
34 the state for later distribution outside the state.

1 NEW SECTION. **Sec. 10.** A manufacturer of products containing PBDEs
2 that are restricted under this chapter must notify persons that sell
3 the manufacturer's products in this state about the provisions of this
4 chapter no less than ninety days prior to the effective date of the
5 restrictions.

6 NEW SECTION. **Sec. 11.** The department shall assist state agencies
7 to give priority and preference to the purchase of equipment, supplies,
8 and other products that do not contain PBDEs.

9 NEW SECTION. **Sec. 12.** (1) Retailers who unknowingly sell products
10 banned under section 4, 5, or 7 of this act are not liable under this
11 chapter.

12 (2) In-state retailers in possession of products on the date that
13 restrictions on the sale of the products become effective under section
14 4, 5, or 7 of this act may exhaust their existing stock through sales
15 to the public.

16 (3) The department must assist in-state retailers in identifying
17 potential products containing PBDEs.

18 (4) If a retailer unknowingly possesses products that are banned
19 for sale under section 4, 5, or 7 of this act and the manufacturer does
20 not recall the products as required under section 13(2) of this act,
21 the retailer may exhaust its existing stock through sales to the
22 public. However, no additional banned stock may be sold or offered for
23 sale.

24 NEW SECTION. **Sec. 13.** (1) Enforcement of this chapter must rely
25 on notification and information exchange between the department and
26 manufacturers. The department shall achieve compliance with this
27 chapter using the following enforcement sequence:

28 (a) Before the effective date of the product bans in section 4, 5,
29 or 7 of this act, the department shall prepare and distribute
30 information to in-state manufacturers and out-of-state manufacturers,
31 to the maximum extent practicable, to assist them in identifying
32 products prohibited for manufacture, sale, or distribution under this
33 chapter.

34 (b) The department may request a certificate of compliance from a

1 manufacturer. A certificate of compliance attests that a
2 manufacturer's product or products meets the requirements of this
3 chapter.

4 (c) The department may issue a warning letter to a manufacturer
5 that produces, sells, or distributes banned products in violation of
6 this chapter. The department shall offer information or other
7 appropriate assistance to the manufacturer in complying with this
8 chapter. If, after one year, compliance is not achieved, penalties may
9 be assessed under subsection (3) of this section.

10 (2) A manufacturer that knowingly produces, sells, or distributes
11 a product prohibited from manufacture, sale, or distribution in this
12 state under this chapter shall recall the products and reimburse the
13 retailer or any other purchaser for the product and any applicable
14 shipping and handling for returning the products.

15 (3) A manufacturer of products containing PBDEs in violation of
16 this chapter is punishable by a civil penalty not to exceed one
17 thousand dollars for each violation in the case of a first offense.
18 Manufacturers who are repeat violators are liable for a civil penalty
19 not to exceed five thousand dollars for each repeat offense. Penalties
20 collected under this section must be deposited in the state toxics
21 control account created in RCW 70.105D.070.

22 NEW SECTION. **Sec. 14.** The department may adopt rules to fully
23 implement this chapter.

24 NEW SECTION. **Sec. 15.** Sections 1 through 14 of this act
25 constitute a new chapter in Title 70 RCW.

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